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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/840,105      | 04/24/2001  | Toru Kikuchi         | 35.G2779            | 4428             |

5514 7590 03/16/2005

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EXAMINER

NGUYEN, BRIAN D

ART UNIT

PAPER NUMBER

2661

DATE MAILED: 03/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/840,105

Applicant(s)

KIKUCHI, TORU

Examiner

Brian D Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on the application filed on 4/24/01.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-10, 12-16, 18-22, 24-28, 30-34 and 36 is/are rejected.
- 7) ☒ Claim(s) 5, 11, 17, 23, 29 and 35 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

1. Formal drawings are required in this application because figures 1 and 2 filed on 9/25/01 are informal.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 4, 6-8, 10, 12-14, 16, 18-20, 22, 24-26, 28, 30-32, 34, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Imai et al (6,507,611) in view of Hensley et al (6,754,439).

Regarding claims 1-2, 4, and 6, Imai discloses a communication apparatus, comprising: first coding means for creating first coded data including audio signals coded by using a first coding method; second coding means for creating second coded data including audio signals coded by using a second coding method that is different from the first coding method; control means for switchably selecting at least one of the first coded data created by the first coding method and the second coded data created by the second coding method; and sending means for sending the selected at least one of the first coded data and the second coded data to another communication device (see abstract; figures 4-8). Imai does not specifically disclose the sending means sends the first coded data and the second coded data when the control means switches

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selection from the first coding method to the second coding method while the communication apparatus is in communication with the other communication device. However, Hensley discloses a system and a method to switch between various streams in a seamless, continuous and reliable manner in which a first coded data and a second coded data are sent and a control means switches selection from the first coding method to a second coding method (see abstract; figures 1 & 4; col. 1, lines 31-55; col. 2, lines 22-26; col. 5, lines 14-41). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the switching technique as taught by Hensley in the system of Imai in order to guarantee a smooth transition between different coding methods.

Claims 7, 13, 19, 25, and 31 have substantially the same limitation as claim 1. Therefore, they are subject to the same rejection.

Claims 8, 14, 20, 26, and 32 have substantially the same limitation as claim 2. Therefore, they are subject to the same rejection.

Claims 10, 16, 22, 28, and 34 have substantially the same limitation as claim 4. Therefore, they are subject to the same rejection.

Claims 12, 18, 24, 30, and 36 have substantially the same limitation as claim 6. Therefore, they are subject to the same rejection.

4. Claims 3, 9, 15, 21, 27, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over (6,507,611) in view of Hensley et al (6,754,439) as applied to claims 1, 7, 13, 19, 25, and 31 above, and further in view of Kawai (2001/0033237).

Regarding claims 3 and 27, Imai in view of Hensley does not specifically disclose the first and second coded data are packetized in a same packet. However, this feature is well known

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in the art. Kawai discloses two different coded data are included in a data packet (see figure 10). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the packetizing technique as taught by Kawai in the system of Imai in view of Hensley in order to meet specific needs.

Regarding claims 9, 15, 21, and 33, claim 9, 15, 21, and 33 have substantially the same limitations as claim 3. Therefor, they are subject to the same rejection.

#### ***Allowable Subject Matter***

5. Claims 5, 11, 17, 23, 29, and 35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Freerksen (6,260,117), Riddle Guy (6,175,856), Vargo (6,167,060), Fenton James (6,445,697), Manjunath (6,438,518), Haven Eric (6,735,175), and Henderson (6,493,355).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian D Nguyen whose telephone number is (571) 272-3084. The examiner can normally be reached on 7:30-6:00 Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on (571) 272-3126. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



3/10/05

**BRIAN NGUYEN**  
**PRIMARY EXAMINER**